

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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|-----------------------------------|---|-------------------------|
| DALE WEAVER, |) | |
| PLAINTIFF, |) | |
| VS. |) | 2:09-cv-1941-JHH |
| THE TOWN OF BLOUNTSVILLE, |) | |
| ALABAMA; and JOHN W. FORE, |) | |
| DEFENDANTS. |) | |

MEMORANDUM OF DECISION

The court has before it the November 2, 2009 motion (doc. #5) for summary judgment¹ filed by Defendants The Town of Blountsville, Alabama and John W. Fore. Pursuant to the court's January 7, 2010 order (doc. #11), the motion was deemed submitted, without oral argument, on March 19, 2010. The motion is due to be granted in full for the following reasons.

Plaintiff Dale Weaver commenced this action on September 30, 2009 by filing a complaint in this court alleging false arrest, brought pursuant to 42 U.S.C. § 1983,

¹ Defendants originally entitled their motion as a motion to dismiss. The court set a briefing schedule and reminded the parties that the court could not consider evidence outside the pleadings on a motion to dismiss. (See doc. #6.) In response to that order, Defendants filed a brief in support of the motion to dismiss, or in the alternative, a motion for summary judgment. (Doc. #7.) The court notified the parties that it would treat the motion to dismiss (doc. #5) as one for summary judgment and allowed further briefing. (See doc. #11.)

against the Town of Blountsville and Officer Fore in his individual capacity. (See Compl. ¶¶ 2-3, 26-30.) On November 2, 2009, Defendants filed a brief and evidence² in support of their motion for summary judgment. (See doc. #7 and attachment.) Although the court allowed Plaintiff additional time to file any evidence and/or brief in opposition to the motion for summary judgment (see docs. # 6 & 11), he failed to file any brief or evidence in opposition. In accordance with the court's January 7, 2010 order (doc. #11), the motion (doc. #5) for summary judgment came under submission on March 19, 2010.

The court has reviewed the motion for summary judgment (doc. # 5), the memorandum of law in support of the motion for summary judgment (doc. #7), and the evidentiary material filed in support of the motion for summary judgment. (Exhibit 1 to doc. #7.) Simply put, the evidence before the court fully supports Defendants' position that the release signed by Plaintiff Dale Weaver is a bar to Plaintiff's complaint and claim against the Defendants. There is no evidence to the contrary.³ Therefore, Defendants have carried their burden of demonstrating the absence of any material factual dispute and that are entitled to judgment as a matter

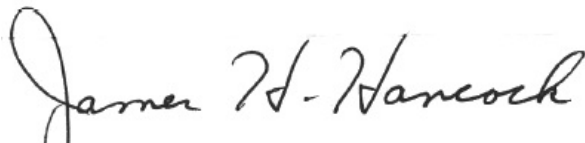
² Defendants submitted a document entitled "Release" signed by Plaintiff Dale Weaver on December 4, 2007.

³ At the hearing on the motion to withdraw, there was some argument by Plaintiff's former counsel that Plaintiff denied signing the release. Plaintiff, however, did not appear at the hearing, nor is there any evidence before the court to that effect.

of law as to the claim asserted in the complaint.

A separate order will be entered. The clerk of the court is directed to mail a copy of this memorandum opinion and the accompanying order to Plaintiff at 212 Alldredge Road, Blountsville, Alabama 35031-6256.

DONE this the 2nd day of June, 2010.

A handwritten signature in black ink, reading "James H. Hancock". The signature is written in a cursive style with a large initial "J".

SENIOR UNITED STATES DISTRICT JUDGE